

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2011100707

R.H.,

Claimant,

v.

WESTSIDE REGIONAL CENTER,

Service Agency.

DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on December 1, 2011, in Culver City, California.

Claimant was represented by her mother.¹ Claimant was not present.

Lisa Basiri, Fair Hearing Coordinator, represented the Westside Regional Center (Service Agency).

The parties submitted the matter for decision on December 1, 2011.

STATEMENT OF THE CASE

The issue in this matter is whether the Service Agency must provide direct advocacy assistance to Claimant, as opposed to advocacy referrals, to assist Claimant in pursuing an SSI² eligibility claim against the Social Security Administration (SSA).

¹ Initials and family titles are used to identify Claimant and Claimant's representative to preserve Claimant's privacy.

² SSI is an acronym for Supplemental Security Income. SSI is a monthly cash benefit available to persons with disabilities to be used generally for food, clothing, and shelter. Eligibility for SSI is determined through a series of rules promulgated by SSA.

Claimant contends she is entitled to direct advocacy against SSA, funded by the Service Agency. Claimant further contends that referrals to sources of advocacy assistance are inadequate to satisfy her rights to advocacy assistance under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.)

The Service Agency contends that referrals to sources of advocacy assistance are appropriate and in accordance with the Legislature's mandates within the Lanterman Act.

FACTUAL FINDINGS

1. On October 12, 2011, the Service Agency informed Claimant that it was denying Claimant's request to "fund an attorney to appeal the Social Security Administration's (SSA) denial of SSI benefits for [Claimant] as a minor." The Service Agency cited to the Lanterman Act generally and to Welfare and Institutions Code sections 4512 and 4433. Claimant appealed timely.

2. Claimant clarified at hearing that she seeks advocacy assistance, not an attorney specifically; although she would be satisfied if the Service Agency were to fund an attorney. Claimant's hearing request supports her clarification.

3. On July 1, 2008, Claimant was placed at the New England Center for Children, a residential program outside of California. Claimant's parents believed this out-of-state placement was necessary to meet her disability-related needs. At the time of her placement, Claimant was a minor. The Service Agency agreed to pay a portion of her residential placement and calculated what it believed was the portion that SSA should pay, via SSI. SSA had not yet determined Claimant eligible for SSI payments. Based on the Service Agency's assertions, Claimant's parents agreed to pay this calculated SSI portion, presuming that once Claimant was found eligible for SSI, SSA would reimburse them.

4. However, SSA denied Claimant's SSI eligibility as a minor, due to Claimant's parents' income and resources.

5. Claimant sought reimbursement from the Service Agency for the payments her parents made between July 1, 2008, and February 28, 2010.³ The amount of reimbursement sought was \$22,471.77. The Service Agency denied Claimant's request; Claimant appealed the denial. An administrative hearing was held on July 28, 2011, and a Decision was rendered on August 9, 2011, denying Claimant's appeal (OAH case number 2010091029).

6. Claimant, through her father, filed a Request for Reconsideration with SSA on September 10, 2010. Claimant's request did not specifically challenge her SSI eligibility as a

³ Claimant turned 18 on February 28, 2010, and thereafter became eligible for SSI as an adult with disabilities. Once an adult, Claimant's parents' income was no longer deemed to her.

minor. The reconsideration request stated, “I believe that [Claimant] should receive a higher monthly rate of SSI. I also question the initial date of her application (when it was received by SSA).” SSA denied the reconsideration on July 12, 2011, stating in relevant part, “[t]he date of 02/28/2010 was used as the application date for [Claimant] as it was the date in which [Claimant] turned 18 yrs. [Claimant] had not pursued any previous applications as her parents income and resources were deem able [*sic*] to her and they would have disqualified her from obtaining any SSI.”

7. Claimant seeks the Service Agency’s assistance to further appeal the SSI eligibility denial. Claimant argues that the assistance must be direct advocacy, meaning a person who will appeal and advocate against SSA on Claimant’s behalf.

8. The Service Agency responded to Claimant’s request for advocacy assistance by referring her to the Office of Client Rights Advocacy (OCRA). OCRA is the entity that contracts with the California regional centers to provide advocacy services to regional center clients. OCRA provided Claimant with a list of attorney and advocacy agencies that specialize in Social Security cases. The referral list was from Disability Rights California (DRC), the federally funded Protection and Advocacy agency that provides advocacy services to persons with disabilities in California. OCRA and DRC are related organizations. Claimant also sought the assistance of Area Board X (AB10). AB10 is a statewide advocacy agency that oversees the developmental disabilities service system.

9. OCRA and AB10 denied providing Claimant direct advocacy services. However, in addition to the referral list provided by OCRA, OCRA provided Claimant with advice and counsel. Part of OCRA’s advice was to insist on direct advocacy services from the Service Agency.

10. It was not conclusively established that Claimant has attempted to seek the services of each attorney or advocacy agency on the DRC referral list from OCRA. The list contains 29 referrals. However, Claimant’s mother stated at hearing that she has attempted to speak to some of the referrals, but has not found an advocate who can assist Claimant.

11. The Service Agency argued that the referrals are sufficient to meet its advocacy obligations under the Lanterman Act.

12. The Service Agency believes SSA should have found Claimant eligible for SSI as a minor.

13. There was no agreement on the part of the Service Agency to fund the portion of Claimant’s residential placement that it believed should have been funded by SSA/SSI.

LEGAL CONCLUSIONS

1. Claimant bore the burden of proof by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. Welfare and Institutions Code section 4512 provides that services and supports from the Service Agency “may include . . . advocacy assistance”

3. Welfare and Institutions Code section 4433, subdivision (b) provides that the Department of Developmental Services “contract for clients’ rights advocacy services” for all regional center clients through a “single statewide contract with a nonprofit agency” OCRA is that agency.

4. This case turns on what the Legislature meant by “advocacy assistance” in the Lanterman Act. The Legislature did not define those terms in the statute. It is therefore, appropriate to look at the plain meaning of the words and consider the statute as a whole. In construing a statute, one must “ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose” (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387.) “[S]tatutes must be construed so as to give a reasonable and common-sense construction consistent with the apparent purpose and intention of the lawmakers—a construction that is practical rather than technical, and will lead to wise policy rather than mischief or absurdity. [Citation].” (*People v. Martinsen* (1987) 193 Cal.App.3d 843-848.)

5. The New Oxford American Dictionary defines “advocacy” as, “public support for or recommendation of a particular cause or policy” and “the profession or work of a legal advocate.” (New Oxford Am. Dict., Oxford University Press, 2005.)

6. State case law has defined “advocacy” as follows: “Advocacy has been defined as ‘the action of advocating, pleading for, or supporting’ (Webster’s 3d New Internat. Dict. (1993) p. 32), ‘the act of advocating, or speaking or writing in support (of something)’ Webster’s New World Dict. (3d college ed. 1991) p. 20), ‘[t]he act of pleading for, supporting, or recommending active espousal’ Black’s Law Dict. (5th ed. 1979) p. 50, and ‘[t]he act of pleading for, supporting, or recommending; active espousal’ (*Gitlow v. New York* (1925) 268 U.S. 652, 665; 45 S.Ct. 625; 69 L.Ed. 1138.)” (*People v. Ward* (2009) 173 Cal.App.4th 1518, 1529, original italics.)

7. These definitions make clear that a particular person, an advocate or attorney, is not the sole definition of “advocacy.” Advocacy is broader and includes actions that support or recommend something. The Legislature authorizes regional centers to provide “advocacy assistance,” and “assistance” means help. “Advocacy assistance” then cannot be read so narrowly or specifically as to require a particular, individual advocate. It is a

reasonable interpretation of the law that, for purposes of pursuing generic agency resources, referrals to other sources of advocacy are appropriate and within the definition of “advocacy assistance.” The Service Agency need not be expected to provide or otherwise fund an advocate to directly pursue Claimant’s eligibility appeal with SSA. This view is further supported by noting that the Legislature mandates that regional centers contract with advocacy service providers, like OCRA, to provide advocacy services. (Welf. & Inst. Code, § 4433.) Thus, the Legislature did not intend for the regional centers to provide all client advocacy services directly, or to fund private advocates. That OCRA is not representing Claimant against SSA does not change this analysis. It is salient that OCRA has provided Claimant with attorney and advocate referrals. Those referrals and the initial referral to OCRA satisfy the Lanterman Act’s advocacy assistance requirements of the Service Agency.

8. Cause exists to deny Claimant’s appeal, as set forth in Factual Findings 1-13, and Legal Conclusions 1-7.

ORDER

Claimant’s appeal, in OAH case number 2011100707, is denied.

Dated: December 12, 2011

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. This Decision binds both parties. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.